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No. 90-294

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

BILL SANDLIN,

Petitioner,

v.

TEXACO REFINING AND MARKETING INC.,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

Of Counsel:
THOMAS J. GOODWIN
TEXACO INC.
Texaco Heritage Plaza
1111 Bagby
Houston, Texas 77002
(713) 752-6004

R. STEVEN HAUGHT
DAUGHERTY, BRADFORD, FOWLER & MOSS
900 First City Place
204 North Robinson
Oklahoma City, OK 73102
(405) 232-0003

TERRI J. FRANK
TEXACO INC.
2000 Westchester Avenue
White Plains, New York 10650
(914) 253-4690

Counsel of Record and Attorney for Respondent Texaco Refining and Marketing Inc.

September 14, 1990

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QUESTIONS PRESENTED

1. Whether the United States Court of Appeals for the Tenth Circuit properly applied the "good faith and normal course of business" standard to determine liability under the Petroleum Marketing Practices Act in stating that this tests the honest commercial judgment of the franchisor?

2. Whether the United States Court of Appeals for the Tenth Circuit applied the proper standard in reviewing the jury verdict when it held that there was no evidence or reasonable inferences from the evidence that could support the jury verdict?

LIST OF PARTIES

The parties to the proceedings are Bill Sandlin and Texaco Refining and Marketing Inc., a wholly owned subsidiary of Texaco Inc.

In addition, pursuant to Rule 29.1, the affiliated corporate entities of Texaco Inc. are as follows:

Four Star Oil and Gas Company
Texaco Cogeneration Company
Texaco Pipeline Inc.
Texaco Producing Inc.
Texaco Refining and Marketing Inc.
Texaco Refining and Marketing (East) Inc.
Texaco TPC Inc.
Texaco Trading and Transportation Inc.
Norsk Texaco Oil A/S
S.A. Texaco Belgium N.V.
Texaco A/S
Texaco Britain Limited
Texaco Denmark Inc.
Texaco Investments (Netherlands), Inc.
Texaco (Ireland) Limited
Texaco Limited
Texaco North Sea U.K. Company
Texaco Petroleum Maatschappij (Nederland) B.V.
Refineria Panama S.A.
Refineria Texaco de Honduras, S.A.
Texaco Brasil S.A. — Produtos de Petroleo
Texaco Caribbean Inc.
Texaco Nigeria Limited
Texaco Overseas (Nigeria) Petroleum Company
Texaco Panama Inc.
Texaco Petroleum Company
Texaco Puerto Rico Inc.
Texas Petroleum Company
Getty Oil Company
Texaco Chemical Company
Texaco International Trader Inc.
Texaco Overseas Holdings Inc.
Texaco Overseas Petroleum Company
TRMI Holdings Inc.

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STATUTES INVOLVED

Respondent sets forth in the Appendix hereto, pp. A-1, *et seq.*, the relevant portions of the Petroleum Marketing Practices Act 15 U.S.C. § 2801, *et seq.*, to present a more complete picture of the statute than in the Petition.

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RESPONDENT'S BRIEF IN OPPOSITION

The Respondent, Texaco Refining and Marketing Inc., respectfully requests that this Court deny the petition for a writ of certiorari, seeking review of the Tenth Circuit's opinion in this case. That opinion is reported at 900 F.2d 1479 (10th Cir. 1990).

STATEMENT OF THE CASE

Petitioner's Statement of the Case is both inaccurate and incomplete. Accordingly, Respondent offers the following clarifying statement.

Petitioner, Bill Sandlin, was a Texaco gasoline retailer in Moore, Oklahoma from May 1982 until May 1986. As a result of the merger of Texaco Inc. and Getty Oil Co. in 1984, Respondent, Texaco Refining and Marketing Inc. ("TRMI"), became the owner of several hundred Getty service stations, including one directly across the street from Sandlin.[1] Following an investigation of the merger, the Federal Trade Commission issued a Consent Order which required Texaco, *inter alia*, to give up the Getty trademark in conjunction with the sale of certain

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[1] On December 31, 1984, TRMI succeeded Texaco Inc. as Sandlin's (and other Texaco retailers') franchisor.

marketing assets in the northeast. This, in turn, led to Texaco converting its many remaining Getty stations, including the one across from Sandlin, to the Texaco brand.

Faced with competing stations across the street from one another, TRMI concluded that it was not in its best interest to keep both stations. TRMI's decision to sell Sandlin's station followed an analysis of the two locations' past performance, potential performance, and accessibility to major thoroughfares and shopping centers. The analysis confirmed what Sandlin acknowledged in his own complaint: that the former Getty station was more desirable. Accordingly, the Tenth Circuit concluded that TRMI made a determination in good faith and in the normal course of business to sell the station operated by Sandlin. Thus, Petitioner's contention that the nonrenewal was for the purpose of acquiring Sandlin's business for itself or diverting such business to the former Getty station is clearly unfounded.

In compliance with the Petroleum Marketing Practices Act ("PMPA"), 15 U.S.C. § 2801 et seq., TRMI notified Sandlin that his franchise relationship would not be renewed when it expired because TRMI had decided to sell the station. TRMI made a written offer to sell the location to Sandlin for the lowest of three independent appraisals. Sandlin rejected the offer and brought this lawsuit alleging that: (1) TRMI's decision to nonrenew his franchise was not made in good faith and TRMI's offer to sell the station was not bona fide, and (2) TRMI breached its covenant of good faith and fair dealing implicit in contracts under Oklahoma law by operating a competitive station across the street for a period of ten months. [2]

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[2] Petitioner's contention that TRMI "sold gas retail at that particular location for less than its wholesale price to Petitioner" is misleading. As the Tenth Circuit pointed out, Sandlin's testimony that "on 'certain days and certain times' he saw posted prices at TRMI's neighboring station that were lower than his purchase price .... [was] ... not evidence that TRMI set those prices intentionally to harm Sandlin or that the prices were set in an effort to take an unfair advantage of him." 900 F.2d at 1483, n.7. Furthermore, there was no evidence in the record that such alleged low prices caused Sandlin any anticompetitive harm.

The jury returned verdicts in Sandlin's favor on both the PMPA and state law claims. Contrary to Petitioner's contention, however, Sandlin did *not* establish his PMPA claim on stipulated facts. [3] The District Court denied TRMI's Motions for Judgment Notwithstanding the Verdict and for New Trial and entered judgment for Sandlin. TRMI appealed to the United States Court of Appeals for the Tenth Circuit which reversed with instructions to the District Court to enter judgment in favor of TRMI on all claims. The Tenth Circuit held that there was no evidence or reasonable inferences from the evidence to support the jury verdicts on either of Sandlin's claims.

REASONS WHY THE PETITION SHOULD BE DENIED

I. The Tenth Circuit Applied the Proper Standard in Determing Liability Under The Petroleum Marketing Practices Act, in Full Accord with Other Circuits.

Petitioner claims that the United States Court of Appeals for the Tenth Circuit adopted a new test to determine whether Respondent violated the PMPA in its nonrenewal of Petitioner's franchise; namely, whether the decision to nonrenew was in the franchisor's "honest commercial judgment." Petitioner further claims that such a test was "virtually identical" to one specifically rejected by Congress—the reasonable business judgment test—and for that reason, this Court should grant a writ of certiorari. Both of these claims are wholly without merit.

The PMPA governs terminations and nonrenewals of petroleum franchises. It was enacted to protect franchisees from "arbitrary or discriminatory" terminations and nonrenewals. S. Rep. No. 731, 95th Cong., 2d Sess. 15, 18, *reprinted in* 1978 *U.S. Code Cong. & Admin. News* 877. At the same time however, Congress intended the PMPA to allow reasonable business judgments by the franchisor. S. Rep. No. 731, *supra*, at 18-19 *reprinting* at 876-877; *Brungardt* v. *Amoco Oil Co.*, 1984-1 Trade Cas. (CCH) ¶ 65,829, at 67,465 (10th Cir. 1983); *Brach*

[3] The only pertinent stipulation was to the effect that a written notice of nonrenewal was given on the grounds that TRMI had made a decision to sell the premises. As noted *infra*, that is one of the statutorily permitted grounds for nonrenewal.

v. *Amoco Oil Co.*, 677 F.2d 1213, 1220 (7th Cir. 1982); *Veracka* v. *Shell Oil Co.*, 655 F.2d 445, 448 (1st Cir. 1981). Section 2802 (b)(3)(D), at issue in this case, allows franchisors to nonrenew a franchise based on a decision to alter, replace or sell the marketing premises. Nonrenewal is permitted in such a case, if, among other things, the decision to sell is made "in good faith and in the normal course of business." 15 U.S.C. § 2802 (b)(3)(D).

In applying the standard to this case, the Tenth Circuit pointed out that the "initial inquiry, whether the franchisor made the substantive decision in good faith and the normal course of business, tests the honest commercial judgment of the franchisor." 900 F.2d at 1481. The Tenth Circuit held that the record evidence established that TRMI's decision to sell the station operated by Sandlin was grounded in TRMI's honest commercial judgment, *i.e.*, it was in good faith. 900 F.2d at 1482, n.1. In other words, TRMI's "good faith" was affirmatively demonstrated by the fact that there was a sound commercial reason for the decision to sell Sandlin's station; namely, that TRMI owned competing stations directly across the street from each other and Sandlin's was inferior from a profitability and location standpoint. Thus, the court was not applying a "new" test at all.

Furthermore, in contending that the Tenth Circuit applied the wrong test to determine liability under the PMPA, Petitioner seeks to equate "honest commercial judgment" with "reasonable business judgment." Such contention is contrary to both the express language of the Tenth Circuit's decision and the obvious meaning of the words themselves. The word "honest" only looks to the franchisor's *intent*; *i.e.*, whether the franchisor's decision was made in good faith. The word "reasonable" on the other hand, invites courts to evaluate the decision from an economic standpoint. Both Congress and the Tenth Circuit rejected such an inquiry into the business judgment itself.[4] Thus, it is patently clear that the Tenth Circuit did not invent and apply a "new test" contrary to the intent of Congress.

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[4] If the "reasonable business judgment" test was applied, however, it would be an even more difficult test for the franchisor to meet.

Finally, such a claim is insupportable in view of the express language of the Tenth Circuit's decision:

> It is essential to recall Congress did not intend to intrude courts into the marketplace by permitting "judicial second guessing of the economic decisions of franchisors." *Svela* v. *Union Oil Co. of Calif.*, 807 F.2d 1494, 1501 (9th Cir. 1987). While Congress intended the good faith test to prevent franchisors from shielding their decisions with artifice, the normal course of business element examines whether the franchisor made the choice through its usual decision-making process. "The legislative history of the PMPA indicates that courts should look to the franchisor's intent rather than to the effect of his actions, making [the good faith test] a subjective test." *Svela*, 807 F.2d at 1501 (citation omitted).

Id. at 1481. This approach is in full accord with existing case law and the legislative history of the PMPA. *See Ewing* v. *Amoco Oil Company*, 823 F.2d 1432, 1438 (10th Cir. 1987) ("The record is devoid of evidence that the decision to convert Ewing's station was anything other than a legitimate business decision based solely on economic considerations."); *Valentine* v. *Mobil Oil Corp.*, 789 F.2d 1388, 1392 (9th Cir. 1986) ("Courts have construed this section as precluding judicial second guessing of 'the economic impact of *an otherwise legitimate business decision* by the franchisor . . . .' " Citations omitted, emphasis added.); *Svela* v. *Union Oil Company of California*, 807 F.2d 1494, (9th Cir. 1987) ("The evidence introduced at trial clearly indicates that Union's decision was made *for economic reasons only* and in the normal course of business." Emphasis added.); *Brach* v. *Amoco Oil Company*, 677 F.2d 1213, 1222-23 (7th Cir. 1982); S. Rep. No. 731, 95th Cong., 2d Sess. 15, 37, *reprinted in* 1978 *U.S. Code Cong. & Admin. News* 896.

II. The Tenth Circuit Applied the Proper Standard of Review in Evaluating the Issues in This Case.

Petitioner also claims that the Tenth Circuit applied an improper standard of review in evaluating all issues. This claim

is clearly wrong as the Tenth Circuit expressly applied the correct standard of review as follows:

> We judge whether a motion for judgment n.o.v. should have been granted upon a de novo review of the record to determine whether a jury could properly find for the prevailing party. In performing this task, we do not weigh the evidence or pass upon the credibility of the witnesses, and we view the evidence in a light most favorable to the appellee. *Anderson* v. *Phillips Petroleum Co.*, 861 F.2d 631 (10th Cir. 1988); *Brown* v. *McGraw-Edison Co.*, 736 F.2d 609 (10th Cir. 1984).

900 F.2d at 1483, n.5. *See United States* v. *Singer Mfg. Co.*, 374 U.S. 174, 194, n.9 (1963). After applying the proper standard of review, the Tenth Circuit concluded that: "no evidence or reasonable inferences from the evidence can shore up the jury's verdict." 900 F.2d at 1483. Thus, the court did not commit reversible error.

III. The Questions Raised by Petitioner Are Not Sufficiently Important to Warrant Review.

Propositions II and IV of Sandlin's petition consist solely of contentions which turn on the alleged facts of this case alone, and relate solely to the parties hereto. This Court has expressly held that a grant of certiorari is not for the purpose of reexamining facts: "We do not grant a certiorari to review evidence and discuss specific facts." *United States* v. *Johnston*, 268 U.S. 220, 227 (1925). Accordingly, Respondent will not address each of Petitioner's assertions separately in this response. It is Respondent's position, however, that every assertion in those sections is unsupported by evidence, incorrect, contentious and/or irrelevant to the questions presented to this Court for review.

For example, Petitioner incorrectly asserts that the Tenth Circuit questioned whether the statement "To hell with Sandlin" was actually made. While it is true that the alleged statement was denied by two witnesses, the court did not question whether it was made. Instead, the court questioned whether the statement related to TRMI's decision to sell the station. For purposes

of its decision, however, the court assumed both that the statement was made and that it related to TRMI's decision to sell Sandlin's station. The Tenth Circuit correctly observed:

> Even if the statement referred to TRMI's decision to sell, which is questionable, it is difficult to see how that decision, under all the circumstances of this case, is premised on the franchisor's spite. Indeed, the purported statement is irrelevant to the inquiry of whether the decision is grounded in TRMI's honest commercial judgment. . . . Given the evidence which established the superior profitability of the former Getty station, TRMI established a sound commercial reason for the decision not to renew. The alleged statement simply did not controvert this reason.

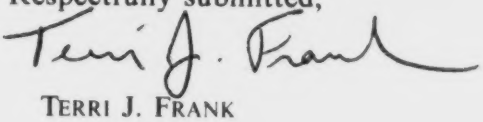
900 F.2d at 1482, n.1.

In drawing its conclusions, therefore, the Tenth Circuit did not weigh such "evidence" in TRMI's favor or determine the credibility of witnesses. Instead, after a thorough review of Sandlin's contentions, the Tenth Circuit correctly recognized and concluded that they do not constitute evidence, either factually or inferentially, which could support the jury verdict. *Id.* at 1483. Thus, further review of these or other facts asserted by Petitioner, is clearly not warranted by this Court.

CONCLUSION

For all of the foregoing reasons, the United States Court of Appeals for the Tenth Circuit properly reviewed and reversed the decision of the District Court. There was nothing extraordinary or unusual about this decision. Moreover, the decision does not conflict with decisions in other circuits. Thus, it is respectfully submitted that Sandlin's petition for a writ of certiorari should be denied.

Respectfully submitted,



Of Counsel:
THOMAS J. GOODWIN
TEXACO INC.
Texaco Heritage Plaza
1111 Bagby
Houston, Texas 77002
(713) 752-6004

R. STEVEN HAUGHT
DAUGHERTY, BRADFORD,
FOWLER & MOSS
900 First City Place
204 North Robinson
Oklahoma City, OK 73102
(405) 232-0003

TERRI J. FRANK
TEXACO INC.
2000 Westchester Avenue
White Plains, New York 10650
(914) 253-4690

Counsel of Record and
Attorney for Respondent
Texaco Refining and
Marketing Inc.

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APPENDIX

UNITED STATES CODE, TITLE 15

FRANCHISE PROTECTION

§ 2801. Definitions

As used in this title:

(1)(A) The term "franchise" means any contract—

(i) between a refiner and a distributor,

(ii) between a refiner and a retailer,

(iii) between a distributor and another distributor, or

(iv) between a distributor and a retailer,

under which a refiner or distributor (as the case may be) authorizes or permits a retailer or distributor to use, in connection with the sale, consignment, or distribution of motor fuel, a trademark which is owned or controlled by such refiner or by a refiner which supplies motor fuel to the distributor which authorizes or permits such use.

(B) The term "franchise" includes—

(i) any contract under which a retailer or distributor (as the case may be) is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by such refiner or by a refiner which supplies motor fuel to the distributor which authorizes or permits such occupancy;

(ii) any contract pertaining to the supply of motor fuel which is to be sold, consigned or distributed—

(I) under a trademark owned or controlled by a refiner; or

(II) under a contract which has existed continuously since May 15, 1973, and pursuant to which, on May 15, 1973, motor fuel was sold,

consigned or distributed under a trademark owned or controlled on such date by a refiner; and

(iii) the unexpired portion of any franchise, as defined by the preceding provisions of this paragraph, which is transferred or assigned as authorized by the provisions of such franchise or by any applicable provsion of State law which permits such transfer or assignment without regard to any provision of the franchise.

(2) The term "franchise relationship" means the respective motor fuel marketing or distribution obligations and responsibilities of a franchisor and a franchisee which result from the marketing of motor fuel under a franchise.

(3) The term "franchisor" means a refiner or distributor (as the case may be) who authorizes or permits, under a franchise, a retailer or distributor to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

(4) The term "franchisee" means a retailer or distributor (as the case may be) who is authorized or permitted, under a franchise, to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

(5) The term "refiner" means any person engaged in the refining of crude oil to produce motor fuel, and includes any affiliate of such person.

(6) The term "distributor" means any person, including any affiliate of such person, who—

(A) purchases motor fuel for sale, consignment, or distribution to another; or

(B) receives motor fuel on consignment for consignment or distribution to his own motor fuel accounts or to accounts of his supplier, but shall not include a person who is an employee of, or merely serves as a common carrier providing transportation service for, such supplier.

(7) The term "retailer" means any person who purchases motor fuel for sale to the general public for ultimate consumption.

(8) The term "marketing premises" means, in the case of any franchise, premises which, under such franchise, are to be employed by the franchisee in connection with the sale, consignment, or distribution of motor fuel.

(9) The term "leased marketing premises" means marketing premises owned, leased, or in any way controlled by a franchisor and which the franchisee is authorized or permitted, under the franchise, to employ in connection with the sale, consignment, or distribution of motor fuel.

(10) The term "contract" means any oral or written agreement. For supply purposes, delivery levels during the same month of the previous year shall be prima facie evidence of an agreement to deliver such levels.

(11) The term "trademark" means any trademark, trade name, service mark, or other identifying symbol or name.

(12) The term "motor fuel" means gasoline and diesel fuel of a type distributed for use as a fuel in self-propelled vehicles designed primarily for use on public streets, roads, and highways.

(13) The term "failure" does not include—

(A) any failure which is only technical or unimportant to the franchise relationship; or

(B) any failure for a cause beyond the reasonable control of the franchisee.

(14) The terms "fail to renew" and "nonrenewal" mean, with respect to any franchise relationship, a failure to reinstate, continue, or extend the franchise relationship—

(A) at the conclusion of the term, or on the expiration date, stated in the relevant franchise;

(B) at any time, in the case of the relevant franchise which does not state a term of duration or an expiration date; or

(C) following a termination (on or after the date of enactment of this Act [enacted June 19, 1978]) of the relevant franchise which was entered into prior to such date of enactment and has not been renewed after such date.

(15) The term "affiliate" means any person who (other than by means of a franchise) controls, is controlled by, or is under common control with, any other person.

(16) The term "relevant geographic market area" includes a State or a standard metropolitan statistical area as periodically established by the Office of Management and Budget.

(17) The term "termination" includes cancellation.

(18) The term "commerce" means any trade, traffic, transportation, exchange, or other commerce—

(A) between any State and any place outside of such State; or

(B) which affects any trade, transportation, exchange, or other commerce described in subparagraph (A).

(19) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and any other commonwealth, territory, or possession of the United States.

(June 19, 1978, P.L. 95-297, Title I, § 101, 92 Stat. 322.)

§ 2802. Franchise relationship

(a) General prohibition against termination or nonrenewal. Except as provided in subsection (b) and section 103 [15 USCS § 2803(b)], no franchisor engaged in the sale, consignment, or distribution of motor fuel in commerce may—

(1) terminate any franchise (entered into or renewed on or after the date of enactment of this Act [enacted June 19, 1978]) prior to the conclusion of the term, or the expiration date, stated in the franchise; or

(2) fail to renew any franchise relationship (without regard to the date on which the relevant franchise was entered into or renewed).

(b) Precondition and grounds for termination or nonrenewal. (1) Any franchisor may terminate any franchise (entered into or renewed on or after the date of enactment of this Act [enacted June 19, 1978]) or may fail to renew any franchise relationship, if—

(A) the notification requirements of section 104 [15 USCS § 2804] are met; and

(B) such termination is based upon a ground described in paragraph (2) or such nonrenewal is based upon a ground described in paragraph (2) or (3).

* * *

(3) For purposes of this subsection, the following are grounds for nonrenewal of a franchise relationship:

(A) The failure of the franchisor and the franchisee to agree to changes or additions to the provisions of the franchise, if—

(i) such changes or additions are the result of determinations made by the franchisor in good faith and in the normal course of business; and

(ii) such failure in not the result of the franchisor's insistence upon such changes or additions for the purpose of preventing the renewal of the franchise relationship.

(B) The receipt of numerous bona fide customer complaints by the franchisor concerning the franchisee's operation of the marketing premises, if—

(i) the franchisee was promptly apprised of the existence and nature of such complaints following receipt of such complaints by the franchisor; and

(ii) if such complaints related to the condition of such premises or to the conduct of any employee of such

franchisee, the franchisee did not promptly take action to cure or correct the basis of such complaints.

(C) A failure by the franchisee to operate the marketing premises in a clean, safe, and healthful manner, if the franchisee failed to do so on two or more previous occasions and the franchisor notified the franchisee of such failures.

(D) In the case of any franchise entered into prior to the date of the enactment of this Act [enacted June 19, 1978] (the unexpired term of which, on such date of enactment, is 3 years or longer) and, in the case of any franchise entered into or renewed on or after such date (the term of which was 3 years or longer, or with respect to which the franchisee was offered a term of 3 years or longer), a determination made by the franchisor in good faith and in the normal course of business, if—

(i) such determination is—

(I) to convert the leased marketing premises to a use other than the sale or distribution of motor fuel,

(II) to materially alter, add to, or replace such premises,

(III) to sell such premises, or

(IV) that renewal of the franchise relationship is likely to be uneconomical to the franchisor despite any reasonable changes or reasonable additions to the provisions of the franchise which may be acceptable to the franchisee;

(ii) with respect to a determination referred to in subclause (II) or (IV), such determination is not made for the purpose of converting the leased marketing premises to operation by employees or agents of the franchisor for such franchisor's own account; and

(iii) in the case of leased marketing premises such franchisor, during the 90-day period after notification

was given pursuant to section 104 [15 USCS § 2804], either—

(I) made a bona fide offer to sell, transfer, or assign to the franchisee such franchisor's interests in such premises; or

(II) if applicable, offered the franchisee a right of first refusal of at least 45-days duration of an offer, made by another, to purchase such franchisor's interest in such premises.

* * *

§ 2804. Notification of termination or nonrenewal of franchise relationship

(a) General requirements applicable to franchisor. Prior to termination of any franchise or nonrenewal of any franchise relationship, the franchisor shall furnish notification of such termination or such nonrenewal to the franchisee who is a party to such franchise or such franchise relationship—

(1) in the manner described in subsection (c); and

(2) except as provided in subsection (b), not less than 90 days prior to the date on which such termination or nonrenewal takes effect.

* * *

(c) Manner and form of notification. Notification under this section—

(1) shall be in writing;

(2) shall be posted by certified mail or personally delivered to the franchisee; and

(3) shall contain—

(A) a statement of intention to terminate the franchise or not to renew the franchise relationship, together with the reasons therefor;

(B) the date on which such termination or nonrenewal takes effect; and

(C) the summary statement prepared under subsection (d).

(d) Preparation, publication, etc., of statutory summaries. (1) Not later than 30 days after the date of enactment of this Act [enacted June 19, 1978], the Secretary of Energy shall prepare and publish in the Federal Register a simple and concise summary of the provisions of this title, including a statement of the respective responsibilities of, and the remedies and relief available to, any franchisor and franchisee under this title.

(2) In the case of summaries required to be furnished under the provisions of section 102(b)(2)(D)[15 USCS § 2802(b)(2)(D)] or subsection (c)(3)(C) of this section before the date of publication of such summary in the Federal Register, such summary may be furnished not later than 5 days after it is so published rather than at the time required under such provisions.

(June 19, 1978, P.L. 95-297, Title I, § 104, 92 Stat. 329.)

§ 2805. Enforcement provisions

(a) Maintenance of civil action by franchisee against franchisor; jurisdiction and venue; time for commencement of action. If a franchisor fails to comply with the requirements of section 102 and 103 [15 USCS §§ 2802 or 2803], the franchisee may maintain a civil action against such franchisor. Such action may be brought, without regard to the amount in controversy, in the district court of the United States in any judicial district in which the principal place of business of such franchisor is located or in which such franchisee is doing business, except that no such action may be maintained unless commenced within 1 year after the later of—

(1) the date of termination of the franchise or nonrenewal of the franchise relationship; or

(2) the date the franchisor fails to comply with the requirements of section 102 or 103 [15 USCS §§ 2802 or 2803].

* * *

(c) **Burden of proof; burden of going forward with evidence.** In any action under section (a), the franchisee shall have the burden of proving the termination of the franchise or the nonrenewal of the franchise relationship. The franchisor shall bear the burden of going forward with evidence to establish as an affirmative defense that such termination or nonrenewal was permitted under section 102(b) or 103 [15 USCS §§ 2802(b) or 203], and, if applicable, that such franchisor complied with the requirements of section 102(d) [15 USCS § 2802(d)].

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§ 2806. Relationship of statutory provisions to State and local laws

(a) To the extent that any provision of this title applies to the termination (or the furnishing of notification with respect thereto) of any franchise, or to the nonrenewal (or the furnishing of notification with respect thereto) of any franchise relationship, no State or any political subdivision thereof may adopt, enforce, or continue in effect any provision of any law or regulation (including any remedy or penalty applicable to any violation thereof) with respect to termination (or the furnishing of notification with respect thereto) of any such franchise or to the nonrenewal (or the furnishing of notification with respect thereto) of any such franchise relationship unless such provison of such law or regulation is the same as the applicable provision of this title.

(b) Nothing in this title authorizes any transfer or assignment of any franchise or prohibits any transfer or assignment of any franchise as authorized by the provisions of such franchise or by any applicable provision of State law which permits such transfer or assignment without regard to any provision of the franchise.

(June 19, 1978, P. L. 95-297, Title I, § 106, 92 Stat. 332.)